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OFFICE OF
COMPLIANCE AND ENFORCEMENT

FROM: Dustan Bott & Chae Park
THRU: Claire Schary
TO: Water Quality Workgroup
SUBJECT: Best Practices for Water Quality Trading Joint Regional Agreement
DATE: December 2013

1. The permit must have clear parameters and direction for trade. Permit must clearly specify that trade is allowed. If appropriate, it would specify the entity that trade is allowed with. However, doing so may limit future options such as if the designated credit generator cannot fulfill its obligation for whatever reason.
2. The permit must specify the limit (w/out trade) and then allow trade as an alternative towards compliance.
3. If trade is used towards compliance, the permittee shall specify in the DMR comment section that credits were bought. The permittee must also certify that the credits were real.
4. The permittee must report the trade reflected discharge value in the DMR cell and simultaneously provide in that DMR's comment section the info on the actual discharge value and credit purchased. *Note: The value reported in the DMR cell will be compared to the compliance limit in the permit and entered into ICIS. This is why it is important to report in the cell the trade reflected discharge value rather than the actual discharge value.*
5. We noticed in the latest discussion guide that trade is assumed to be steady state. While that may be fine for temperature, for other pollutants a more free market oriented trade platform that would allow for purchase of what is needed on a monthly (or even daily) basis might expand potential participants.
6. We also noticed in the latest guide that there are what appear to be example enforcement scenarios (see p. 69). That cannot be in there. That can be interpreted as enforcement policy which at a minimum can become a distraction during possible future enf actions.
7. The permittee alone is responsible to ensure the validity of credit purchased. This philosophy must be reflected in the permit everywhere necessary. We have no regulatory hook for the credit generators. To that end, the permittee must certify in each DMR that the credit purchased was in fact available. An analogy is if a facility bought treatment equipment and it did not achieve compliance, we would not be looking at the manufacturer of the treatment equipment for enforcement. It is always up to the permittee to make sure they are in compliance. This does not mean that a third party verifier cannot be used by the permittee. In fact, they probably should but at their discretion and comfort level. The permittee is ultimately accountable and responsible for the trading transactions, and it's up to them to determine the level of acceptable risk and what makes sense for the facility from a business perspective.

8. The permittee must be required to have an annual report covering credit-generating projects and that it is working. The annual report should also have a summary accounting of the actual discharge/ credit bought/ and trade reflected value reported in the DMRs. But, do not have this report be sent to EPA. But rather, have it be available upon request. The reason for not submitting the report to EPA is that we do not want to find ourselves in a role of having to concur (even thru silence) on the validity of the credit generating project. We just do not have the resources to be able to do that. This is no different than other plans such QA, O/M that are required in our recent permits but not required to be submitted but required to be made available upon request.
9. If there is a compliance schedule in the permit, that does not change anything. Whatever is the limit at the time (final limit or interim limit) will be the compliance point. Since compliance schedule permit limits are typically lower than the final, during that period less credit can be bought. But, the reporting and everything else would be the same.